

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
vs.) Case No.: 4:09-cr-96-RWS (DDN)
)
ANTHONY RIZZUTI,)
)
 Defendant.)

DEFENDANT’S OBJECTIONS TO THE PRESENTENCE
INVESTIGATION REPORT

COMES NOW Defendant, Anthony Rizzuti, by and through counsel, and files the following objections to the presentence investigation report (“PSR”):

1. **Objection #1/Paragraph 8:** Defendant did not believe that the agent who portrayed Allie was a fourteen (14) year-old female.
2. **Objection #2/Paragraph 10:** On June 1, 2008, Defendant determined not to meet “Hannah,” but did so at her insistence.
3. **Objection #3/Paragraph 11:** Defendant did not admit that “he was trying to meet a female that he believed to be 14 years old.” In fact, Defendant did not believe that she was fourteen (14) years old. In addition, Defendant did not know the age of the persons with whom he communicated through Yahoo messenger and email accounts and did not believe them to be minors. Indeed, their actual ages and identities are unknown to Defendant, the government, and the United States Probation Office alike. The PSR errs, therefore, in so far as it identifies them as “minor females.”

4. **Objection #5/Paragraph 13:** None of the images listed in paragraph 13 constitute unlawful material. As a result, they do not form part of the offense of conviction or its relevant conduct. See e.g., United States v. Sheahan, 31 F.3d 595, 600 (8th Cir. 1994) (holding the government must prove by a preponderance of the evidence that the alleged conduct constitutes criminal conduct before a district court may consider it relevant conduct for purposes of §1B1.3). Accordingly, the material included in paragraph 13 does not belong in the Offense Conduct section of the PSR. See Office of Probation and Pretrial Services, Administrative Office of the United States Courts, Publication 107, Presentence Investigation Report at III-10 (Revised March 2006) (noting “[t]he offense conduct is a concise but complete description of the defendant’s conduct and the conduct of co-defendants or other participants. It addresses all relevant conduct occurring during the offense of conviction, including the planning and preparation for the offense, and the circumstances leading to the arrest or summons of the defendant.”).

Respectfully submitted,

ROSENBLUM, SCHWARTZ, ROGERS & GLASS, PC

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CERTIFICATE OF SERVICE

I hereby certify that on March 19, 2010, the foregoing was electronically filed with the Clerk of the Court to be served by operation of the Court's electronic filing system upon Mr. Robert F. Livergood, assistant United States attorney.

Defendant's Objections to the Presentence Investigation Report

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